

**FINANCING AGREEMENT**

**between**

**ECONOMIC DEVELOPMENT AUTHORITY  
OF PAGE COUNTY, VIRGINIA**

**and**

**REBECCA G. HUDSON**

**Dated as of December 29, 2008**

**Economic Development Authority of Page County, Virginia  
\$6,500,000 Revenue Note  
to Rebecca G. Hudson**

**EXHIBIT A-1**

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**THIS FINANCING AGREEMENT** dated as of December 29, 2008, is between the **ECONOMIC DEVELOPMENT AUTHORITY OF PAGE COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "Authority"), and **REBECCA G. HUDSON** (the "Seller").

**WITNESSETH:**

**WHEREAS**, the Authority is a political subdivision of the Commonwealth of Virginia duly created by the County of Page, Virginia (the "County"), under the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the "Act");

**WHEREAS**, the Authority is authorized to exercise all the powers set forth in the Act, which include, among other things, the power to acquire, improve, maintain, equip, own, lease and dispose of properties, to the end that the Authority may be able to protect and promote tourism and economic development in the Commonwealth, to issue revenue bonds, notes and other obligations for the purpose of carrying out any of its powers and to pledge the revenues and receipts from the leasing of such facilities, or from any other source, to the payment of such bonds, notes and other obligations;

**WHEREAS**, at the request of the County, the Authority has entered into a Purchase Agreement dated December 1, 2008 (the "Purchase Agreement"), between the Authority and the Seller, in which the Seller has agreed to sell, and the Authority has agreed to buy, certain real property located in Page County, Virginia, as further described in the Purchase Agreement (the "Property");

**WHEREAS**, as set forth in the Purchase Agreement, the Authority will purchase the Property for a purchase price of \$7,500,000, \$1,000,000 of which will be paid by the Authority to the Seller at Closing (as defined in the Purchase Agreement), and the balance of which will be evidenced by a non-recourse promissory note in the original principal amount of \$6,500,000 (the "Note");

**WHEREAS**, pursuant to a resolution adopted by the Board of Supervisors on December 9, 2008, the County has agreed, subject to appropriation of sufficient amounts for such purpose, to pay to the Authority such amounts as necessary to enable the Authority to pay when due the principal of, premium, if any, and interest on the Note;

**WHEREAS**, the Authority agrees to repay the Note solely from the payments received from the County under such resolution;

**WHEREAS**, the Authority and the Seller desire to set forth the terms and conditions with respect to the issuance and sale of the Note; and

**WHEREAS**, all acts, conditions and things required by law to happen, exist and be performed precedent to and in connection with the execution of and entering into this Agreement have happened, exist and have been performed in regular and due time and in form and manner as required by law, and the parties hereto are now duly empowered to execute and enter into this Agreement;

**NOW, THEREFORE**, the parties hereto agree as follows:

**Section 1.     Definitions.**

In addition to other terms defined elsewhere in this Agreement, the following terms shall have the following meanings in this Agreement unless the context otherwise requires:

"Act" shall mean the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended.

"Agreement" shall mean this Financing Agreement, including any amendments or supplements hereto.

"Authority" shall mean the Economic Development Authority of Page County, Virginia, a political subdivision of the Commonwealth of Virginia, its successors and assigns.

"Bond Counsel" shall mean Hunton & Williams LLP, Richmond, Virginia.

"Code" shall mean the Internal Revenue Code of 1986, as amended, including applicable regulations and revenue rulings thereunder.

"County" shall mean Page County, Virginia.

"Deed of Trust" shall mean the Deed of Trust dated December 29, 2008, to Mark N. Reed and Robert S. Janney, Trustees, covering real estate situate in the Marksville Magisterial District of Page County, Virginia.

"Financing Instruments" shall mean this Agreement, the Purchase Agreement, the Deed of Trust and the Note.

"Note" shall mean the \$6,500,000 Revenue Note of the Authority to the Seller in the form of Exhibit 1 attached hereto.

"Property" shall mean the real estate subject to the Deed of Trust.

"Purchase Agreement" shall mean the Purchase Agreement dated December 1, 2008, between the Authority and the Seller as amended by the First Amendment thereto dated December 17, 2008.

"Revenues" shall mean the amounts paid by the County to the Authority for the purpose of making payments on the Note.

"Seller" shall mean Rebecca G. Hudson, as holder of the Note.

**Section 2.     Representations and Findings by Authority.**

The Authority makes the following representations and findings as the basis for its undertakings hereunder:

(a) The Authority is duly organized under the Act and has the power to execute and deliver the Financing Instruments to which it is a party, to perform its obligations thereunder, to issue the Note and to carry out its other obligations under such Financing Instruments. The facilities to be financed with the proceeds of the Note constitute "authority facilities" within the meaning of the Act, and the loan of the proceeds of the Note to the Authority by the Seller furthers the purposes for which the Authority was organized. By proper corporate action, the Authority has duly authorized the execution and delivery of such Financing Instruments, the performance of its obligations thereunder and the issuance of the Note. Simultaneously with the execution and delivery of this Agreement, the Authority has issued and sold the Note to the Seller.

(b) Intentionally omitted

(c) No further approval, consent or withholding of objection on the part of any regulatory body, federal, state or local, is required in connection with (1) the issuance and delivery of the Note by the Authority or (2) the execution or delivery of or performance by the Authority of its obligations under the Financing Instruments to which it is a party.

(d) No litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to its knowledge, threatened against the Authority with respect to (1) the organization and existence of the Authority, (2) its authority to execute or deliver the Financing Instruments to which it is a party, (3) the validity or enforceability of any of such Financing Instruments or the performance of its obligations thereunder, (4) the title of any officer of the Authority who executed such Financing Instruments or (5) any authority or proceedings related to the execution and delivery of such Financing Instruments on behalf of the Authority. No such authority or proceedings have been repealed, revoked, rescinded or amended and all are in full force and effect.

Notwithstanding anything herein to the contrary, any obligation the Authority may incur hereunder in connection with the financing of the Project shall not be deemed to constitute a general obligation of the Authority but shall be payable solely from the payments received from the County for such purposes.

### **Section 3. Sale and Purchase of Note.**

(a) As a portion of the purchase price of the Property, the Authority shall issue and present to the Seller the Note, and the Seller shall accept such Note, all upon the terms and conditions set forth herein and in the Purchase Agreement and the Note.

(b) In determining to accept the Note as a portion of the Purchase Price of the Property, the Seller has not relied upon any information (including financial information) relating to the Authority or the County, nor has it relied upon the omission of the Authority to provide any such information.

(c) Intentionally omitted.

(d) Intentionally omitted.

**Section 4. Conditions Precedent To Delivery of Note.**

The Seller shall accept delivery of the Note only upon delivery to her of the following:

- (a) Executed copies of the Financing Instruments, in accordance with the terms of the Agreement;
- (b) Evidence of the due authorization, execution and delivery of the Financing Instruments by the parties thereto;
- (c) Intentionally omitted.
- (d) Intentionally omitted.
- (e) Intentionally omitted.

**Section 5. Amounts Payable; Prepayment; Term.**

(a) The Authority shall make all payments required under the Note as and when the same become due, but only from the Revenues. All payments shall be made in lawful money of the United States to the Seller at her principal residence or any other place that the Seller may designate in writing to the Authority.

(b) The Note may be prepaid in whole or in part at the option of the Authority according to its terms.

(c) Intentionally omitted.

(d) This Agreement shall terminate upon the redemption, defeasance or payment in full of the Note.

**Section 6. Use of Proceeds; Other Matters with Respect to the Property, the Note and Tax Exemption.**

This section has been intentionally omitted.

**Section 7. Acknowledgment of Seller with Regard to Tax Consequences of Transaction.**

The Seller has received an opinion from Hunton & Williams LLP, Bond Counsel, dated the date hereof, to the effect that under current provisions of the Code, interest payable under the Note is not includable in the gross income of the Seller for federal income tax purposes, which opinion assumes continuous compliance with certain covenants in the Nonarbitrage Certificate to be executed and delivered by the Authority on the date of delivery of the Note and is otherwise limited in accordance with its terms. The Seller acknowledges that Seller has made Seller's own independent investigation and has consulted with such attorneys, accountants and others as the Seller shall have selected in the Seller's sole discretion to advise the Seller with respect to all other tax considerations related to the transaction contemplated hereby (including, but not limited to, installment sales treatment under Section 453 of the Code, imputed interest rate on

certain debt instruments under Section 1274 of the Code, charitable contribution deductions under Section 170 of the Code, and federal estate tax implications); and the Seller certifies that the Seller has not looked to or relied upon the Authority or any of its officials, agents or employees, or to Bond Counsel, with respect to any of such matters.

**Section 8. Limitation of Authority's Liability.**

No covenant, agreement or obligation contained in any Financing Instrument shall be deemed to be a covenant, agreement or obligation of any past, present or future director, officer, employee or agent of the Authority in his individual capacity, and neither the directors of the Authority nor any officer, employee or agent thereof executing any Financing Instrument shall be liable personally on such Financing Instrument or be subject to any personal liability or accountability by reason of the issuance thereof. No director, officer, employee or agent of the Authority shall incur any personal liability with respect to any other action taken by him pursuant to the Financing Instruments or the Act or any of the transactions contemplated thereby provided he acts in good faith.

THE OBLIGATIONS OF THE AUTHORITY UNDER THE FINANCING INSTRUMENTS TO WHICH IT IS A PARTY ARE NOT GENERAL OBLIGATIONS OF THE AUTHORITY BUT ARE LIMITED OBLIGATIONS PAYABLE SOLELY FROM THE REVENUES AND RECEIPTS DERIVED BY THE AUTHORITY FROM APPROPRIATIONS MADE BY THE BOARD OF SUPERVISORS OF PAGE COUNTY, VIRGINIA, TO THE AUTHORITY FOR SUCH PURPOSE. THE OBLIGATIONS OF THE AUTHORITY HEREUNDER SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY AND COUNTY. NEITHER THE COMMONWEALTH OF VIRGINIA NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY AND THE COUNTY, SHALL BE OBLIGATED TO PAY THE OBLIGATIONS HEREUNDER OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE REVENUES, RECEIPTS AND PAYMENTS PLEDGED THEREFOR, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY AND THE COUNTY, IS PLEDGED TO THE PAYMENT OF THE OBLIGATIONS HEREUNDER.

**Section 9. Registration of the Note.**

The Note shall be issued in registered form without coupons, payable to the registered owner or registered assigns. The Authority shall keep books for the registration of transfer of the Note as the Note Registrar. The transfer of the Note may be registered only upon an assignment executed by the registered owner in such form as shall be satisfactory to the Authority, such registration to be made on the registration books and endorsed on the Note by the Seller. The person in whose name the Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of and interest on the Note shall be made only to or upon the order of the registered owner thereof or his legal representative.

**Section 10. Events of Default.**

The following shall be "Events of Default" under this Agreement, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure of the Authority to pay when due the principal of or interest on the Note, and the continuation thereof for 45 business days after notice of such default, as provided in the Note;

(b) Intentionally omitted.

**Section 11. Remedies.**

Whenever any Event of Default shall have happened and is continuing, the Seller may take any one or more of the following remedial steps, without further demand or notice:

(a) declare immediately due and payable the entire unpaid principal balance of the Note, or

(b) take whatever action at law or in equity may appear necessary or desirable to collect the principal of and interest on the Note then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Authority under this Agreement, including pursuing any other remedy permitted to the Seller under the Financing Instruments.

**Section 12. Notices.**

Except as may otherwise be provided in the applicable Financing Instrument, all demands, notices, approvals, consents, requests and other communications hereunder and under the other Financing Instruments shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage prepaid, addressed:

(a) if to the Seller, at 852 Middleburg Road, Luray, Virginia 22835; with a copy to Robert S. Janney, Esquire, 12 South Court Street, Luray, Virginia 22835; or

(b) if to the Authority, at 117 South Court Street, Luray, Virginia 22835 (Attn: Thomas Cardman, Executive Director); with a copy to Mark N. Reed, Esquire, Reed & Reed, P.C., 16 South Court Street, Luray, Virginia 22835.

**Section 13. Miscellaneous.**

(a) This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and the subsequent holders of the Note and their respective successors and assigns. The representations, covenants and agreements contained herein shall continue notwithstanding the delivery of the Note to the Seller.

(b) If any provision of this Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.



(c) This Agreement shall be governed by the applicable laws of the Commonwealth of Virginia. The Financing Instruments express the entire understanding among the parties and none of such instruments may be modified except in writing signed by the parties. No Financing Instrument may be modified before payment of the note without the consent of the Seller.

(d) This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names, all as of the date first above written.

**ECONOMIC DEVELOPMENT AUTHORITY  
OF PAGE COUNTY, VIRGINIA**

By \_\_\_\_\_  
Chairman

**REBECCA G. HUDSON**  
\_\_\_\_\_

Exhibit 1 to Financing Agreement between the Economic Development Authority of Page County, Virginia and Rebecca G. Hudson.

R-1

\$6,500,000

**UNITED STATES OF AMERICA**  
**COMMONWEALTH OF VIRGINIA**  
**ECONOMIC DEVELOPMENT AUTHORITY**  
**OF PAGE COUNTY, VIRGINIA**

**Revenue Note to**  
**Rebecca G. Hudson**

**Maturity Date**

**Interest Rate**

**Dated Date**

January 1, 2014

5.0%

December 29, 2008

The Economic Development Authority of Page County, Virginia, a political subdivision of the Commonwealth of Virginia (the "Authority"), for value received, hereby promises to pay, solely from the source and as hereinafter provided, to the order of Rebecca Graves Hudson (the "Seller"), in lawful money of the United States of America, the principal amount of SIX MILLION FIVE HUNDRED THOUSAND DOLLARS (\$6,500,000), together with interest hereon from January 1, 2009, on the unpaid principal at the rate of 5.0% per annum, calculated on the basis of a 360-day year of twelve 30-day months. The Authority agrees to make regular principal and interest payments of \$378,808.05 per annum, beginning on January 1, 2010, and continuing on the 1<sup>st</sup> day of each succeeding year thereafter until the 1<sup>st</sup> day of January, 2014, at which time any and all remaining principal and interest shall be due and payable in full.

This Note is authorized and issued pursuant to the Industrial Development and Revenue Bond Act (Chapter 49, Title 15.2, Code of Virginia of 1950, as amended) for the purpose of financing the purchase of certain real property in Page County, Virginia, as further described in Exhibit A hereto (the "Property"), from the Seller pursuant to a Purchase Agreement dated December 1, 2008 (the "Purchase Agreement"), between the Authority and the Seller. Reference is hereby made to the Purchase Agreement and to the Financing Agreement dated as of December 1, 2008, between the Authority and the Seller and all amendments and supplements thereto for a description of the provisions with respect to the nature and extent of the security for this Note, the rights, duties and obligations of the Authority and the rights of the holder of this Note with respect thereto. All capitalized terms used herein but not defined shall have the meanings in the Purchase Agreement.

This Note is secured by a Deed of Trust dated December 29, 2008 (the "Deed of Trust"), to Mark N. Reed and Robert S. Janney, Trustees (the "Trustees"), covering real estate situate in the Marksville Magisterial District of the County of Page. Except as provided for in the Deed of Trust, if any of the real estate covered by the Deed of Trust is sold or transferred to any person or entity other than the County of Page, Virginia (the "County"), without the Seller's prior written

consent, the Seller at its option may accelerate this Note and demand immediate payment in full of all outstanding principal and accrued interest hereunder.

If the Authority does not pay the full amount of each payment on the date it is due, it will be in default. If the Authority is in default the Seller may send it a written notice telling it that if it does not pay the overdue amount by a certain date, which date is at least 45 days after the date of the notice, the Seller may require the Authority to pay immediately the full amount of principal which has not been paid and all interest then due on such amount.

If it remains in default 45 days after being notified of the default, the Authority agrees to pay the costs of collection and reasonable attorneys' fees, provided that this Note be placed in the hands of an attorney and is collected without suit; and to pay in the event action be instituted on this Note, the costs and expenses of such action, including such sums as the court may fix as attorneys' fees.

It is understood and agreed that in the event the Authority does not make the payments set forth in this note, the Seller's sole recourse against the Authority shall be to invoke its right to have the Trustees sell the real estate securing this Note.

This Note may be prepaid by the Authority in whole or in part at any time with no prepayment penalty. Any such prepayment will be applied first to accrued interest and then to principal, and such prepayment will not suspend or defer any regular annual installment payment which will be paid in accordance with its terms.

This Note and the interest hereon are limited obligations of the Authority payable solely from the revenues and receipts derived by the Authority from appropriations made by the Board of Supervisors of the County, to the Authority for such purpose, which revenues and receipts have been pledged and assigned to secure payment thereof. This Note and the interest hereon shall not be deemed to constitute a debt or a pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the County. Neither the Commonwealth of Virginia nor any political subdivision thereof, including the Authority and the County, shall be obligated to pay the principal or interest on this Note or other costs incident thereto except from the revenues and receipts pledged and assigned therefor, and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the County, is pledged to the payment of the principal or interest on this Note or other costs incident thereto. No covenant, condition or agreement contained herein shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Authority in his individual capacity, and neither the directors of the Authority nor any officer thereof executing this Note shall be liable personally on this Note or be subject to any personal liability or accountability by reason of the issuance thereof.

This Note is registered in the name of the holder hereof on the registration books kept by the Note Registrar designated pursuant to the Financing Agreement, which registration has been made in said registration books and endorsed hereon by the Note Registrar, and no registration of transfer hereof shall be valid unless made on said registration books at the written request of the holder as provided in the Financing Agreement.

All acts, conditions and things required to happen, exist or to be performed precedent to and in the issuance of this Note have happened, exist and have been performed.

IN WITNESS WHEREOF, the Economic Development Authority of Page County, Virginia, has caused this Note to be signed by its Chairman, its seal to be affixed hereon and attested by its Secretary, and this Note to be dated December 29, 2008.

ECONOMIC DEVELOPMENT AUTHORITY  
OF PAGE COUNTY, VIRGINIA

(SEAL)

By \_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

## TRANSFER OF NOTE

The transfer of this note may be registered by the Registered Owner or its duly authorized attorney or legal representative upon presentation hereof to the Registrar who shall make note of such transfer in books kept by the Registrar for that purpose and in the registration blank below.

<u>Date of Registration</u>	<u>Name of Registered Owner</u>	<u>Signature of Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____